THE

RAILWAY PROBLEM

IN THE

STATE OF NEW YORK.

OPENING STATEMENT

BY

SIMON STERNE,

COUNSEL FOR THE CHAMBER OF COMMERCE AND BOARD OF TRADE AND TRANSPORTATION,

BEFORE THE

ASSEMBLY SPECIAL COMMITTEE ON RAILROADS,

NEW YORK, JUNE 12TH, 1879.

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EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON STREET.

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Pursuant to adjournment the Assembly Special Committee on Railroads, composed of Hon. A. B. Hepburn, Chairman, and Hons. James W. Husted, Henry L. Duguid, James Low, Thomas F. Grady, William L. Noyes, Jas. W. Wadsworth, George L. Terry, and Charles S. Baker, met at Municipal Hall, 67 Madison avenue, New York.

Preparatory to the taking of testimony, Mr. Sterne made the following opening:

Gentlemen:

Acting on the suggestion made by the Chairman of this Committee, to employ counsel, the Chamber of Commerce's Special Committee and the Board of Trade and Transportation have united in requesting me to represent them before you in investigating the abuses which have been developed in our railway system, and which, we believe to be of so serious and grave a character that they imperil the financial and commercial welfare and supremacy of the City and State of New York.

Our railway legislation is a development and outcome of a system anterior to the application of steam to purposes of transportation, and properly to understand it we must dwell for a moment upon the conditions existing at the time when this great revolutionizer of methods of transportation came into being.

The ordinary highways or turnpikes, the natural waterways and canals were the means of intercommunication of our people; of these the turnpikes and highways, were in part in private hands and in part in the hands of the public; and the natural waterways and canals were of course public highways; were then and are now the property of the State.

Such of the turnpikes or highways which were owned by the counties and townships were free, such as had passed into the hands of private corporations were under strict restrictions, in relation to their use. The charges by way of tolls thereon, for their occupation by vehicles, animals, and foot passengers were, by chapter 33 of the laws of 1807, to be posted, stating what it shall be for each animal, chariot, coach, wagon, stage, &c. And then it was provided "that if any toll-

gatherer shall unreasonably delay or hinder any traveler or passenger at either of said gates, or shall demand and receive more toll than by this act established, he shall for each such offence forfeit and pay five dollars;" and then those "Communists" of 1807, proceeded to enact "that the Legislature may dissolve the said corporation when the income arising from the said toll shall have paid and compensated the said corporation for all moneys they may have expended in purchasing and making said road, together with an interest thereon of ten per cent. per annum, besides the expense of repairing and taking care of said road; and thereupon the right, interests and property of the said corporation shall be vested in the people of this State, and be and remain at their disposal."

And it was further provided, "that no person being a director of said turnpike road shall, directly or indirectly, contract for or be concerned in any contract for the making or working of any part or portion of said road during the time he is director as aforesaid."

In England, when the canal sytem, which was as great an advance over the turnpike as the railway was over the canal, first came into being, the canals were built by private individuals and companies, and their charters contained stringent provisions relative to tolls to be charged thereon for the conveyance of boats. It will be remembered that the boats did not belong to the canal company, but that the canal company furnished the waterway, and the boats were put upon the canal by private enterprise and a fixed and definite rate of toll to be charged upon this waterway.

(Here Mr. Sterne quoted at length in illustration of this fact a provision stringently providing, with great detail, a tariff of charges on an English canal as provided by its act of incorporation.)

This State, fortunate in having, in the early part of the century, in De Witt Clinton, a far-sighted statesman; who saw that if canals were permitted to be built and owned by private enterprise, the result would prove the creation of monopolies in transportation which would tax the community at their will, insisted that the canals should be built by the State and remain forever the property of the State. In this he was well seconded by Gouverneur Morris, who, as chairman of a committee, in 1811, reported to

the Legislature, in the following language: "They take the liberty of entering their feeble protest against a grant to private persons or companies. Too great a national interest is at stake. It must not become the subject of a job or a fund for speculation. Among many other objections, there is one insuperable, that it would defeat the contemplated *cheapness of transportation.*"

Acting under the guidance of the pure and wise statesmen who had charge of our State's early government, the Erie Canal and its branches were constructed by the State to be, in the language of the Constitution of 1846, "the property of the State forever, and under its management forever."

Unfortunately, New York had no such far-sighted statesmen when an improvement—the railway—came into existence, which was infinitely superior to, and infinitely more capable of general application than, the canal as a medium of intercommunication; so these improved highways were permitted at the very outset to be built by private individuals, organized under special acts of incorporation. Instead of building these roads with the money of the State, the very reverse of the policy of De Witt Clinton was followed. Not only were they left to private enterprise, but the State contributed by the loan of its own credit and public moneys large sums to these early railway projects. To the Erie Railroad three millions of dollars were given, and $3,217,096.86 interest. To the Auburn & Syracuse, $200,000; to the Auburn & Rochester, $200,000; to the Tonawanda, $100,000; to the Long Island Railroad, and interest, $108,882.49; to the Schnectady & Troy Railroad, $100,000; to the Ithaca & Owego Railroad, and interest, $650,814.67; to the Canajoharie & Catskill Railroad and interest, $380,000; the Hudson & Berkshire and interest, $303,797.02. In all, $8,260,591.04, of which the State received back the sum of $756,152.73. Small as these figures now appear, they then formed a considerable proportion of the cost of these roads.

In the early stages of these new roadways, they were regarded only as improved highways, and it was in contemplation by the legislative bodies who chartered them, as well as by those who received these franchises, that the province of the company owning the road would be to build and construct this highway in the same manner as it is the province of the canal company to construct a canal, and that although they

might supply motive power, the cars and the business of transportation that was to be done along the line of this highway should be in the hands of private individuals.

The early charters, both in England and in this country, contained provisions analogous to those contained in the canal companies' acts, by which persons and corporations other than the company owning the line were permitted to run their own cars over it on payment of certain tolls for motive power. All the early acts contain carefully prepared schedules of both freight and passenger charges down to the minutest details. Thus, the fixing and regulating of freight, as well as passenger charges, were not only not considered confiscation or invasions of rights of property, but were necessary deductions from the fact that the railways were regarded as improved public highways, and that such conditions were, therefore, essentially proper and inseparable from the concessions when made. As an illustration take the Charter of the Ithaca & Owego Railroad:

"SEC. 12. All persons paying the toll aforesaid may, with suitable and proper carriages, use and travel upon the said railroad, subject to such rules and regulations as the said corporators are authorized to make by the ninth section of this act" (Laws of 1028, page 17).

And many of the early charters contain similar provisions.

There were also positive restrictions as to the rates of toll to be charged and inhibitions on merging or consolidating parallel or competing lines.

In a report made by a special committee of the Legislature, in 1843 (Assembly Document No. 80), the following language, unhappily unheeded and unacted upon, appears:

"Combinations and confederacies of any magnitude and extent, even among natural persons, are looked upon with suspicion, and except some good reason, not inconsistent with the public good, and based upon necessity, is apparent for such combinations and confederacies, public sentiment will not tolerate them; and every such combination and confederacy, by which the rights of others are to be and may be injuriously affected, is a misdemeanor, and punishable as such; and the committee can see nothing which should entitle incorporated companies to greater confidence from the public or milder

treatment, when they, by their officers and agents, combine for purposes which may, and to some extent must, necessarily affect injuriously the public interest as well as the rights of individuals."

The various links of what is know as the New York Central chain and the New York and Erie Railway were first prohibited by law from carrying freight in competition with the canal, and were subsequently, by modification of their charters, compelled to pay toll to the canal fund equivalent to what the goods, had they been carried on the canal, would have paid to the canal. In process of time this restriction was first modified and then removed in 1851, and the railways were free to charge what they saw fit on freight.

The passenger traffic was, however, subjected from the outset to strict regulations, and the reason why the freight traffic was not so subjected was because in the infancy of these enterprises it was not supposed that the freight traffic would be of any value to railway corporations, but that, on the contrary, if they carried freight at all, such carriage would be confined to mere passenger baggage or articles of luxury which could bear the expensive tolls which it was supposed that railway companies would be compelled to charge as transportation rates.

It would have been regarded as the wildest sort of chimerical and visionary forecasting for any one to have suggested that the time would come when 80 per cent. of the eastbound freight, composed mainly of cereals and animal food, would be transported by rail.

In a report made to the Legislature in 1835, by Messrs. Jarvis, Holmes, Hutchins and Mills, then leading engineers, to whom the Legislature of 1834 confided the duty to report on the relative cost of railways and canals, these experts say: "The railroads admit of advantageous use in districts where canals for the want of water would be impracticable. They will probably be preferred where high velocities are required and for the transportation of passengers, and under some circumstances for the conveyance of light goods."

Down to 1848 every railway charter was a special concession derived from the Legislature in each particular case, and before the power of eminent domain could be exercised, to some

degree, at least, the Legislature had to be satisfied that the enterprise was one of public utility.

The Constitution of 1846 required the Legislature to pass general laws under which corporations shall be formed, unless the object of the corporation cannot be attained under general laws; and as the special railway legislation was a source of much corruption, it was deemed advisable to enact under this constitutional direction a general railway act.

In 1848 an act was passed under which railway corporations could be organized, but which still provided that before the companies could exercise the right of eminent domain they should obtain a special grant of authority to that effect from the Legislature. This law remained on the statute book just two years, when a new law was passed to take its place—the General Railway Act of 1850—which, with its amendments, substantially is to-day the general law under which railways of this State have since been built, and under which, since its passage, all have been operated.

State supervision and control as to passenger traffic was maintained, by § 28, the amount to be charged therefor was not to exceed three cents per mile on all railways theretofore chartered and those forming under the act, but this law left the railways without control as to the charges to be made on freight which was rapidly growing into their more valuable and more important traffic, and this was done under the impression that the law of competition, which had proved so beneficent a controller of men's rapacity, in the supply of almost all commodities and services, and which had in all other matters produced the best possible and most beneficial results, would in this case be also operative to secure the least possible rates of freight to the consumer and the greatest possible efficiency on the part of the railways. This has, however, proved a mistake.

But even in the law of 1851 there is a faint recognition of the duty of State supervision as to these corporations, and the possibility that they may earn too large sums of money from the community. Section 33 provides: "The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of freight, fare, or other profits upon such road, but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less

than ten per centum per annum on the capital *actually* expended."

It was not foreseen that the natural law of competition cannot apply to such a case, unless railways were multiplied to such a degree, from any given point to any given point, that they would be too numerous to combine, because possible combination excludes competition. Further that competition could come only from an expenditure of so vast a sum of money that its investment was not likely to be made, was another natural limitation to competition in this case, not thought of by the framers of the law of 1850.

The economic law, that a service, which must be consumed upon the spot, and the supply of which can be indefinitely extended by the same person, or class of persons, excludes competition, was also lost sight of or not known. Hence, at the end of almost thirty years from the passage of the general railroad law, we are confronted in this State—indeed in all the States of the Union (which have more or less followed in the wake of New York in this particular)—with a railway problem of the first magnitude, involving not only one, but almost all questions with which other people have had to deal in relation to these corporations, and which is the reason of your presence here and my appearance before you.

The growth of the railway system within this period of thirty years, since the passage of the General Railway Act, has been beyond precedent in the financial history of the world. In 1845 the State of New York had 721 miles of rail; in 1876, 5,550. In the United States the mileage in 1845 was 4,633; in 1877, 78,000 miles, with a nominal capital invested of about $5,000,000,000.

In 1845 the capital represented by the New York railways was $18,000,000. The capital stock and debts now about $500,000,000—an average cost of about $80,000 per mile.

The aggregate gross earnings of the railroads in New York State in 1845 were about $2,000,000. The aggregate gross receipts in 1875 were about $70,000,000—now nearly $95,000,000.

This vast power has been permitted to grow up and overshadow almost every other interest in society, without any responsibility for its management to any one, except, as I shall hereafter show, an illusory one to its stockholding interest.

The State has ceased to control it; the stockholders have

practically ceased to control it. It constituted itself an *imperium in imperio*, overshadowing and overwhelming in its character, permeating every county and every town in the State; employing the best legal and administrative talent therein; being the largest advertiser, and therefore holding to a considerable degree the press under its control; exercising an influence upon elections; oft determining the committees of our legislative bodies, and at critical moments determining the personnel of our State Government.

That with a power so vast and so without control, great abuses should have crept in, is but one of the manifestations of that general law of society which couples unchecked exercise of power with its abuse.

And here, before I come to state the special grievances which have brought us together and upon which we expect to offer evidence, allow me not only as to myself, but also as to the gentlemen whom I represent, to disclaim absolutely and unequivocally any and all personal feeling against the men who have control of our great trunk lines of rail. Our quarrel is with the crown and its prerogatives, not with the head that wears it, and we shall persist before this Committee and elsewhere in drawing attention to the evils incident to our railway system until these evils have been eradicated and reformed.

Whether this Committee will do its duty or not; whether the Legislature to which it may report will perform its duty or not; whether we shall adequately present the evils of our railway system or not is at best a matter of but temporary consequence, because this agitation and desire for reform must continue and will continue until a remedy is found, because the pressure is constant upon the community, and will continue to be more and more appreciated and felt as other causes, more readily remediable in their nature, which are hindrances to our prosperity, are discovered and removed.

We find that in 1850 there were in the State of New York, with a mileage of 1,230 miles, 26 operated railways; that the average number of miles controlled by each company was about 45 miles, and now, with almost 6,000 miles of railroad, the number of roads has increased to but 50, and half this mileage and half these companies are now controlled by the Erie, the Delaware & Hudson and the New York Central Railroads.

Split up as the interest then was, without a comprehensive plan of operations, without a systematic method of conduct of affairs, there was scarcely any danger to be apprehended from our then railway system; but amalgamation, as it is called in England—consolidation, as it is termed here—is one of the laws of railway being, and both there and here, not only in England, but also on the Continent, railway consolidation and amalgamation has proceeded with gigantic strides, as these facts will show:

The New York Central alone controls one-fifth of our railway mileage of the State; a one-sixth is under the control of the Erie; and these corporations have under lease and control in other States a mileage at least double that which they operate here.

England has gone through the same process of consolidation during the same time. The London & Northwestern Railroad, which in 1846 owned 399 miles, had grown in 1870 to a mileage of 1,507. The Great Western, which in 1846 had 126 miles, owned in 1876 1,287 miles. The Great Eastern Railroad, which had 220 miles in 1847, in 1870 owned 876. The Northeastern, which had 274 miles in 1847, owned 1,281 in 1870. An altered condition of affairs was brought about by the existence of these vast corporations now controlling thousands of miles instead of hundreds, and with it came also an altered spirit toward each other. The smaller railways anterior to 1850, wherever they competed, were constantly at war, and low local rates were the consequence.

The waste and destruction to these large corporations when war began between them were so great that treaties of peace—alliances defensive as to themselves and offensive as to the rest of the community—were entered into under the form of freight contracts, and which have culminated in a pooling of earnings, making for the great trunk lines on westbound freight, and now on eastbound freight, a common purse under the management of one of the most astute and capable experts on railway matters in this country; and thus, despite the law of 1869 and anterior laws, bringing about practically a consolidation in fact, although not in form.

Hence, even the pretence of competition is now abandoned between the great railway corporations of this country. The

jealous regard that was had by the law to preserve competition by the provision that roads running on parallel lines shall not be consolidated nor leased by one another, was by these working arrangements or freight arrangements or pooling contracts, made nugatory:—a condition of competition no longer exists between parallel lines, and a close alliance has been formed between the trunk lines running parallel through different States to prevent competition between them.

Another important discovery was made by the railway corporations in regard to the limits to which a war of rates could safely be carried on against each other, and that limit was that it must stop short of driving a rival line into insolvency. As I said on a former occasion, an insolvent road relieved from any present hope of dividends on stock or interest on bonds, and no one expecting such return on investment of capital, carries freight for anything that pays an excess over operating expenses. Therefore, the New York Central enters into a combination with the Baltimore & Ohio and Pennsylvania Roads to sustain these lines against its own natural advantages and those of New York Harbor, so as to prevent its rivals from unloading themselves by insolvency from the responsibility of paying dividends and paying interest on bonds, because the moment they become insolvent they "run wild;" and thereupon these insolvent roads, by reason of such insolvency, become more formidable competitors than they were theretofore, and in turn crush the solvent road. If, on the one hand, making railways insolvent by competition would compel them to take up their rails and drive them out of business, and if, on the other hand, you could competitively build to distributing points so many lines that their managers could not combine on rate of tolls, the law of competition would apply in railways as it does in almost everything else; but as neither of the results accomplished by competition in the ordinary vocations takes place, it is clear that we are dealing with exceptional phenomena, to the explanation of which, to apply the general law of competition, is to be guilty of *doctrinaire* pigheadedness. Insolvency not only keeps the road in existence, but so alters the condition of its operating, that for the time being it makes it practically equivalent to a road that cost nothing to build, being then run simply for the operating expenses. Therefore, bankrupting a rival road by competition is placing it in a position of more formidable and really irresistible rivalry.

Here let me observe, that we are quite willing to concede that the railway system has conferred enormous benefits upon society, and that we in the State of New York have shared those benefits with the rest of the world; but, in our gratitude to the railway system, for the benefits that it has conferred, we must not overlook the shortcomings of the men who manage our present railways, and who, as we claim, prevent us from reaping as large a benefit therefrom as we are entitled to enjoy.

The men who are at the head of our railway system have gone into it as they would into any other business, in which, with greater or smaller capital, they expect to reap a benefit and advantage for themselves, and their mode of management certainly shows that philanthropic motives did not in the least enter into the computation in making their investments, but that, on the contrary, they entered into the business with the determination of making as much money out of it as they could, whatever the consequences might prove to the community at large, and they defend that attitude upon the ground that it is a private business, which they have a right to manage in their own way and for their own special interest and behoof.

Therefore, whatever our disposition may be to praise those great engineering and philosophical minds who have invented for us the steam engine and the application thereof to locomotive purposes, we must not confound Vanderbilt with Watt, or Jay Gould with Stephenson, because at the time the men who now derive their splendid incomes from railways, entered into them, these enterprises had for a generation proved assured successes, and the business of transportation by rail was no longer of a problematical or doubtful character.

Let me now draw your attention to the evils which our railway system have brought upon us as a concommitant of the good that they have conferred. See for one moment how splendid was the growth of New York City after the completion of the canal.

The canals were opened early in 1820. The population of the City of New York was then about 123,000. In 1830 it rose to 202,000, an increase of about 78 per cent. In 1840 it rose to 312,000, an increase of about 60 per cent. In 1850 it rose to 515,000, an increase of about 70 per cent. In 1860 it rose to 813,000, an increase of about 60 per cent.

In 1860 the consolidation of the railways may be said to have been about completed. Through lines were then established, and from 1860 to 1870 the rate of increase fell from about 60 per cent. to about 11 per cent., the population in 1870 reaching, according to the United States census, to 942,000.

Let us now look at Philadelphia statistics. From 1850 to 1860, the population rose from 408,000 to 565,000, an increase of 38 per cent. From 1860 to 1870, the population rose from 565,000 to 670,000, an increase of 18 per cent.

Baltimore statistics show that from 1850 to 1860, the popula ion rose from 210,000 to 266,000, an increase of 26 per cent. From 1860 to 1870, the population rose from 266,000 to 330,000. an increase of 24 per cent.

Boston statistics show that from 1850 to 1860, the population rose from 144,000 to 192,000, an increase of 33⅓ per cent.; from 1860 to 1870, the population rose from 192,000 to 270,000, an increase of 40 per cent.

COMPARATIVE RECEIPTS OF GRAIN AT FIVE PORTS—NEW YORK, PHILADELPHIA, BALTIMORE, BOSTON AND MONTREAL, FROM 1870 TO 1878.

	Total receipts five ports.	Total receipts New York.	Total receipts Philadelphia.	Total receipts Baltimore.
1870	124,461,841	69,924,175	15,307,011	13,819,101
1871	158,805,433	89,543,673	20,102,425	17,389,443
1872	166,429,653	90,930,336	24,117,150	20,571,499
1873	174,525,321	92,137,971	24,949,157	19,099,517
1874	192,452,353	107,273,158	24,625,591	24,936,208
1875	179,875,321	93,895,082	28,195,330	22.048,569
1876	212,013,864	95,949,252	35,546,815	35,310,276
1877	205,420,366	103,313,782	25,727,260	34,590,303
1878	293,576,061	152,862,170	45,474,650	47,075,240

THE PERCENTAGE OF THESE RECEIPTS ARE AS FOLLOWS:

	New York.	Philadelphia.	Baltimore.	All but N. Y.
1870	55.7	12.3	11.9	44.3
1871	57.0	12.9	10.2	43.0
1872	53.4	14.2	12.2	46.6
1873	52.8	14.3	11.2	47.2
1874	55.8	12,8	12.9	44.2
1875	52.3	15.7	12.2	47.7
1876	45.8	16.8	17.7	54.2
1877	50.3	12.5	16.8	49.6
1878	52.06	15.49	16.04	47.94

Then look at the following table of hotel statistics prepared by the *Commercial Advertiser* last year from data furnished by one of the leading hotels :

Year.	Daily average.	Yearly aggregate.
1865	560	205,000
1866	600	220,000
1867	550	200,000
1868	500	187,500
1869	460	168.000
1870	450	165,000
1871	430	156,000
1872	420	152,000
1873	390	143,000
1874	380	139,000
1875	300	109,000
1876	275	100,000
1877	260	94,000

I firmly believe that before we shall have concluded the evidence we shall show to you that this diversion of trade from New York, this growth of rival cities, is mainly due to the peculiarities of management of our railway lines, which in many instances give through rates from and to Liverpool from Western centres at rates almost as low as the ocean freights alone would be from New York to Liverpool, or Liverpool to New York.

Now, gentlemen, first and foremost, we charge and shall prove to you that our railway companies have shamelessly evaded the provisions as to ten per cent. dividends in the watering of their stock and in the issuing of their bonds, so that the declaration of dividends gives us now no clue as to what is actually earned upon actual cost of the roads. Indeed, they have capitalized the future prosperity of the community, capitalized the supposed value of their franchises, capitalized the non-interference of the Legislature and the neglect of duty on the part of the State, so as to make it almost impossible to tell what the cost of railway enterprises has been and how much from time to time of the amount which has gone upon the books into the construction account of these various organizations has actually been invested in the road.

The best and most careful minds among railway experts admit the truth of the charge, confess its hardship on the

community, but say "What can we do? If you restrict the New York roads from carrying at 18 cents a hundred from Chicago to New York because they charge 22 cents from Canandaigua—unless they reduce the Canandaigua rate to below 18 cents the Pennsylvania Central and the Baltimore & Ohio will do all the through business." My answer is, that if left to unrestricted competition, the corporations that derive their franchises from the bounty of our State can continue a profitable existence only on the condition that the State that gave them birth shall submit to be strangled by them, the sooner the State re-asserts her control the better. If New York sets the example in prohibiting her railways from making these discriminations against the prosperity of her own citizens, it will not be long before the farmers of Pennsylvania and of Maryland will, despite the great power of the railways within their borders to affect legislation, insist upon the passage of like laws against the Pennsylvania Railroad and the Baltimore & Ohio Railroad, and all these trunk lines will then be placed by the laws of their States upon an equal basis, diminishing their power for mischief to the States that have given them birth and nurtured their infancy, without loss--nay, with profit to the trunk lines themselves.

We shall show that the reports to the State Railway Engineer and Surveyor, required to be made by the act of 1850, are utterly inadequate for any purpose, and so meagre in details as to be quite unreliable, and the absence of balance sheets makes them substantially untruthful. We shall show that the system of railways accounts is delusive in the extreme, and is a system by which both the public and the stockholders are grossly and egregiously misled. We shall likewise show that the railway accounts, as published annually by them to the stockholders, do not tell the whole story.

The inadequacy of the law in this particular was seen by Mr. Seymour, who, as State Engineer, in his first report under the law in 1850, says:

"The reports of many corporations under the law, are "imperfect, needlessly so, I imagine; but the law is so framed "as to fail in getting at the information desired or aimed at.

"I suppose the main object of the law to be to show the "actual cost of performing the transportation service of all "our roads each year, and the *amount* of that service; reports

" furnishing such information correctly would be of inestimable " value. * * * * .* We should know all the different " commodities carried, and the rates charged per ton per " mile, and *the cost per ton per mile;* we should, in fact, arrive " at the *actual experience* of roads in this State as to cost of " transportation on railroads.

" The public have a vast interest in the question of the cost " of managing railroads, and of transporting persons and " passengers thereon.

" We could in this State by such laws as may be enacted, " settle this question very accurately in the course of a few " years, under such a variety of conditions as to the amount " of business, grades, &c., as to furnish a parallel to almost " any project which might be contemplated in this State or " elsewhere. * * * * * The 'amount paid out' for fuel, " for instance, or any other item of expense may be very much " less or more than the value *consumed during the year.*

" ' *The amount paid out*' during a number of years, say eight " or ten, would be nearly, an accurate representation of the " cost of the service for that period.

" For these reasons I advise the passage of another law in " place of the one under which the reports herewith are made " and in accordance with the foregoing suggestions." The railways had, however, become too powerful for the State, and such a law was never passed.

We shall show that these common carriers deal unequally with localities and individuals in the same localities, in the State, making by special contracts and special rates unjust and oppressive distinctions, preferring one man to another, in a particular town, one locality to another, and all this quite independent of the commercial considerations of wholesale and retail, and independent of the considerations of mileage, independent of the consideration of volume of traffic or facility of handling at termini.

We shall show that gross inequalities arise from this condition of affairs, and that individuals and communities are put at the mercy of these great corporations, who have it in their power to make one man rich and keep others poor, and that they actually do exercise that power in an arbitrary manner, without rule, without consistency, and seemingly without reason, from which flows bankruptcy to individuals and stagnation and

distress to some of the most important centres of trade in our State.

We shall show that, as a whole, the interior of this State is discriminated against in favor of citizens of far Western States at most distant points, and that such discrimination results in the decay, if not destruction, of our agricultural interests.

We shall show that wherever the monopoly power exists without check and points not touched by any competitive railways are to be found, the tariff rate is grossly unjust and oppressive, and that even at such points special rates are made of an arbitrary character, preferring one man in the same community to others, exempting one man from the general tyranny, and adding the burden of his exemption upon the already too heavily laden backs of his neighbors.

We shall show that many of these rates are made on contracts, by which the shipper agrees not to use the canal, thus making a discrimination by special contract against the very property of the State, for the protection of which in all the earlier railway charters the provision was inserted that these self same corporations shall not carry freight which might be carried upon the canal, or if they do so carry, that they shall pay a toll to the State equivalent to what the canal would have earned by such carriage.

We shall show that some of these discriminations are based entirely upon personal favoritism and not upon any principle, and that that whole system of special contracts is a wholesale "protective" organization by which trade is diverted from one point to another; towns and cities are built up and others pulled down, many private citizens driven into bankruptcy and ruin, and a general displacement and shifting of well-being from one to another is brought about, which, if it were done by the Government itself, and not under the guise of freight charges, would be recognized as a most outrageous act of tyranny and violation of every correct principle underlying our form of government.

We shall show that not only are discriminations made between localities and individuals, but as to whole classes of freight. Not the least onerous among the exactions of these railroad corporation is the tax that they impose upon the consumption of milk in the City of New York.

Milk being a commodity which must be rapidly transported, gives to the railway companies naturally a monopoly of its transportation. Coming from within a radius of a hundred miles from New York, it is a commodity as to which each corporation has a monopoly upon its particular line. They therefore combinedly charge a rate of toll so ridiculously in excess of their ordinary schedule rates that it amounts to a considerable proportion of the value of the article—indeed, one-half of what the farmer himself receives for his product; charging for this class at the rate of 55 cents a hundred, as against a tariff of less than 11 cents per hundred for first class of other commodities.

Milk yields a revenue $110 per car per trip, or the astounding revenue of $2,200 per night on each of the local milk trains.

We shall show some glaring instances of dealings with their own trust on the part of railway managers, by reason of which the expense of the administration of the railway practically for all time has been largely increased, and which additional expense is in its turn a constant tax upon the commerce of New York.

We shall show that the stockholders have not fared much better than the public at the hands of the railway director, and that his interests have been sacrificed in many ways for the aggrandizement and pecuniary advantage of the men who control and manage the affairs of the corporations.

Gentlemen, standing as we do at the threshhold of this inquiry, and apprehensive, as you probably are, that the sketch that I have here made of its magnitude and extent may lay out work enough for you to perform for a year or more, and that in the short breathing spell between one legislative session and another you scarcely can be expected to take the testimony and make a report, suggests to me the propriety of drawing your attention to the fact that we are not alone in having a railway problem on our hands. England in times past has had the minds of her statesmen occupied by this subject, and from time to time, as these evils were manifested there, her government dealt with and removed them separately, so that during the very thirty years that we have stood idly by and allowed these evils to grow to their present magnitude, England has, by a series of inquiries made by parliamentary com-

mittees and royal commissions—the work of which I have here before you in these ponderous blue books—mastered the details of these evils and brought these corporations to account, and now, through the instrumentality of a railway commission, holds those gigantic corporations most admirably and powerfully in check, regulates their tariff and requires that they shall be published uniformly at all stations, that goods cannot be hauled for longer distances at prices lower than for shorter distances, and that no unjust discrimination shall exist either as to towns or individuals.

(Mr. Sterne then explained the series of English reports from 1840 to 1872, read the names of commissioners, &c., and read a letter from Mr. Price, showing the additional powers to be conferred upon the Railway Commission this year, and also read from the provisions of Lord Cardwell's Act of 1854).

This Committee will, therefore, see that these questions which are crowded together before them, have from 1840 to 1875—a period of thirty-five years—occupied, from time to time, the attention of the English people, were dealt with singly and disposed of in the best interests of the people.

I do not draw your attention to the condition of the railway problems of other countries for the reason that in no other country except England, her colonies, and in the United States, has the railway system been regarded as anything else but an adjunct of the State works. In all other countries the railway was placed under the strictest possible State supervision, and if allowed to be operated by private corporations, provision was made that sooner or later the State should become the proprietor of the railway, and at all times the government fixed for the railway its tariff of charges and subjected its management to a most constant and rigid scrutiny and control. France, in something like fifty years, will obtain a property almost as large in amount as her national debt as the inheritor of the railway system of that country. Belgium owns two-thirds of the railways within her borders. Prussia is rapidly absorbing the few existing private lines. Italy, in part, owns the railways within her borders, and controls those that she does not own. South Germany owns in great part her railways, and has those which it does not own under absolute control, and regulates the tariff of every pound of freight that they carry.

Indeed, nowhere, as I have said, except in England and in this country, have railways been considered in any other light than as public highways, for the proper management of which in all its details the State was and held itself responsible to its citizens and subjects.

In this country, the State of New York, with a railway capital vastly in excess of that which exists in any other State of the Union is, however, wofully behind them all in dealing with this subject.

By constitutional amendments Pennsylvania has changed the form of the railway report now to be made, and has limited the powers of her railway corporations.

Massachusetts has, since 1870, an admirable Commission, of which Charles Francis Adams, Jr., is at the head, and through the instrumentality of which the discriminations against localities within that State and as to individuals in the same locality, have been made well nigh impossible. A complete system of railway returns, showing a balance sheet, has been secured by that Commission, and of late years a system of railway accounting has been prescribed which will secure not only uniformity in the system of accounts, but some little guarantee that railway accounts shall tell the truth to the general public and the stockholders, as well as afford information to the directors who know the kabala and mystery of their peculiar systems of bookkeeping. These reports I herewith submit, and shall refer to from time to time.

Illinois has organized a Railway and Warehouse Commission which, although it is operated under the most disadvantageous circumstances of constant changes in its *personnel*, has done good work.

Michigan, Wisconsin, Iowa, and Ohio, have preceded New York in the work of bringing the railway corporations to some degree of responsibility to the State which grants these valuable franchises to those who operate them.

Vermont and Connecticut have followed in the wake, and a National Congress of State Railway Commissioners is about to meet at Saratoga for the purpose of securing some uniformity as to the legislation which has governed these bodies, representing at least fifteen States of this Union, and to our shame be it said, this State has no right to be represented in that Congress.

Within the past few years the arrogant pretence made by the railway companies, that theirs was a private business with which the public has no concern, and that it was no more a proper domain of legislation to regulate freight charges than shoemaking charges has been disposed of by a series of learned decisions rendered by the Supreme Court of the United States. That tribunal has now judicially, in this country, formulated the doctrine as old as Sir Matthew Hale, that when a citizen puts his money or his property in the rendering of a public service in the exercise of which he makes use of the sovereign attribute of eminent domain, he gives to the public a copartnership therein, which renders the use of that property at all times subject to public control.

Another contention made by the railway companies against the interference by the State with their peculiar management is, that the National Government can alone deal with so large a question by reason of the peculiarities of inter-State commerce. This is practically a motion to adjourn any attempt to control *sine die*.

There is no probability that within any time about which we need to give ourselves any concern, the National Government will be effectually empowered to regulate the railways in such a manner as the States now can do. The exercise of this power would involve a considerable change in governmental structure, by a constitutional amendment of a very far reaching character.

The difficulty of the case that I am commissioned to present to you is its many-sidedness and the vastness of the wrongs that have crept into railway managment, so that to present it in compassable shape it will be necessary for us to shut our eyes to many evils that call aloud for remedy.

I shall ask your attention, first and foremost, to the questions of local and individual discriminations, and to discriminations against our own State, which have reduced and are daily reducing the value of our farms to a price on a par with the new lands of the far Western States, and which, while to-day it stagnates the population and progress of the interior of New York, must, perforce, to-morrow, cause wholesale emigration therefrom.

Whatever else you may do, I feel quite confident that we shall not differ as to the expediency of checking the course of

our railways in this matter, and of finding a remedy for an oppression of so grievous a character upon the people of our own State by corporations of its own creation.

We shall show you that the law is wholly inadequate for the proper protection of our citizens as it stands at present; that the information vouchsafed to the State Engineer and Surveyor is totally misleading, and that he foresooth is helpless to prevent his office from being the instrument of misinformation to the public, because he is required to publish whatever is shovelled into his basket.

And if, through the instrumentality of this Committee, a remedy may be found substantially to mitigate the dire oppression which now rests upon the people of our State suffered from these transportation corporations, its appointment will form an important epoch in the political history of our State, and its members will have earned the lasting gratitude, not only of the present generation, but to even a greater degree that of posterity.